

106TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To enhance international conservation, to promote the role of carbon sequestration as a means of slowing the build-up of greenhouse gases in the atmosphere, and to reward and encourage voluntary, pro-active environmental efforts on the issue of global climate change.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “International Carbon  
5       Sequestration Incentive Act”.

1           **TITLE I—INVESTMENT TAX**  
2                           **CREDIT**

3   **SEC. 101. CARBON SEQUESTRATION INVESTMENT TAX**  
4                           **CREDIT.**

5           (a) IN GENERAL.—Subpart D of part IV of sub-  
6 chapter A of chapter 1 of the Internal Revenue Code of  
7 1986 (relating to business-related credits) is amended by  
8 adding at the end the following new section:

9   **“SEC. 45D. CARBON SEQUESTRATION INVESTMENT CREDIT.**

10           “(a) ALLOWANCE OF CREDIT.—

11                   “(1) IN GENERAL.—For purposes of section 38,  
12 in the case of an eligible taxpayer who is subject to  
13 the terms and conditions of a carbon sequestration  
14 project contract with respect to a sponsored carbon  
15 sequestration project outside the United States dur-  
16 ing the taxable year, the carbon sequestration invest-  
17 ment credit determined under this section for such  
18 taxable year is an amount equal to—

19                           “(A) \$2.50, multiplied by

20                           “(B) the number of tons of carbon seques-  
21 trated in such project during the taxable year  
22 and verified under subsection (c)(4).

23                   “(2) AGGREGATE DOLLAR LIMITATION.—The  
24 credit determined under paragraph (1) for any tax-  
25 able year, when added to any credit allowed with re-

1       spect to the sponsored project in any preceding tax-  
2       able year, shall not exceed 50 percent of the invest-  
3       ment paid or incurred with respect to such project  
4       through such taxable year.

5       “(b) ANNUAL LIMITATION ON AGGREGATE CREDIT  
6       ALLOWABLE.—

7               “(1) IN GENERAL.—The amount of the carbon  
8       sequestration investment credit determined under  
9       subsection (a) for any taxable year with respect to  
10      a carbon sequestration project sponsored by an eligi-  
11      ble taxpayer shall not exceed the aggregate credit  
12      dollar amount allocated to such project under this  
13      subsection by the implementing panel.

14              “(2) TIME FOR MAKING ALLOCATION.—An allo-  
15      cation shall be taken into account under paragraph  
16      (1) only if it is made not later than the close of the  
17      calendar year in which the carbon sequestration  
18      project contract with respect to such project is en-  
19      tered into by the eligible taxpayer and the imple-  
20      menting panel.

21              “(3) AGGREGATE CREDIT DOLLAR AMOUNT.—  
22      The aggregate credit dollar amount which the imple-  
23      menting panel may allocate for any calendar year is  
24      equal to \$200,000,000.

1       “(c) CARBON SEQUESTRATION PROJECT CON-  
2 TRACT.—For purposes of this section—

3               “(1) IN GENERAL.—The term ‘carbon seques-  
4 tration project contract’ means a contract entered  
5 into between an eligible taxpayer and the imple-  
6 menting panel—

7               “(A) based on a contract offer to increase  
8 the sequestration of carbon in a project spon-  
9 sored by the eligible taxpayer and accepted by  
10 the implementing panel under the carbon se-  
11 questration program established under sub-  
12 section (d)(1),

13               “(B) the duration of which is not less than  
14 30 years, and

15               “(C) which includes the terms and condi-  
16 tions described in paragraphs (2), (3), (4), and  
17 (5).

18       “(2) CARBON SEQUESTRATION PRACTICES.—  
19 Under a carbon sequestration project contract, the  
20 eligible taxpayer shall agree to contract with other  
21 entities, including organizations based in the country  
22 in which the sponsored carbon sequestration project  
23 is located, to carry out carbon sequestration prac-  
24 tices proposed by the eligible taxpayer which (as de-  
25 termined by the implementing panel)—

1           “(A) provide for additional carbon seques-  
2           tration beyond that which would be provided in  
3           the absence of the project sponsored by the eli-  
4           gible taxpayer, and

5           “(B) contribute to a positive reduction of  
6           greenhouse gases in the atmosphere through  
7           carbon sequestration over at least a 30-year pe-  
8           riod.

9           “(3) COMPLIANCE WITH CARBON SEQUESTRA-  
10          TION PROJECT CONTRACT.—

11           “(A) IN GENERAL.—Under a carbon se-  
12           questration project contract, the eligible tax-  
13           payer shall provide the implementing panel with  
14           verification through a third party that the car-  
15           bon sequestration project sponsored by the eli-  
16           gible taxpayer is sequestering carbon in accord-  
17           ance with the contract presented to the imple-  
18           menting panel, including an annual audit of the  
19           project, an actual verification of the practices at  
20           the project site every 5 years, and such random  
21           inspections as are necessary.

22           “(B) FRAUD OR FALSE STATEMENTS.—  
23           Section 1001 of title 18, United States Code,  
24           shall apply to a statement, representation, writ-

1 ing, or document provided by an eligible tax-  
2 payer under this paragraph.

3 “(C) CONFIDENTIALITY.—Information  
4 provided by an eligible taxpayer under this  
5 paragraph shall be considered to be confidential  
6 information for the purposes of section  
7 552(b)(4) of title 5, United States Code.

8 “(4) OPTIONS FOR NEW ELIGIBLE TAX-  
9 PAYER.—Under a carbon sequestration project con-  
10 tract, if, during the term of such contract, an eligi-  
11 ble taxpayer which sponsored the carbon sequestra-  
12 tion project sells or otherwise transfers the carbon  
13 sequestration rights of the project to another eligible  
14 taxpayer, the new eligible taxpayer may—

15 “(A) continue the contract under the same  
16 terms or conditions,

17 “(B) enter into a new contract in accord-  
18 ance with this section, or

19 “(C) elect not to participate in the pro-  
20 gram established under subsection (d)(1).

21 “(5) TERMINATION OF CONTRACTS.—Under a  
22 carbon sequestration project contract, the imple-  
23 menting panel may terminate such contract if—

24 “(A) the eligible taxpayer agrees to the  
25 termination, or

1           “(B) the implementing panel determines  
2           that the termination would be in the public in-  
3           terest.

4           “(d) CARBON SEQUESTRATION PROGRAM.—For pur-  
5 poses of this section—

6           “(1) IN GENERAL.—Within 180 days after the  
7           date of the enactment of the International Carbon  
8           Sequestration Incentive Act, the implementing panel  
9           shall establish a carbon sequestration program to  
10          permit eligible taxpayers to make carbon sequestra-  
11          tion project contract offers to the implementing  
12          panel.

13          “(2) ACCEPTANCE OF CONTRACT OFFERS.—

14                 “(A) IN GENERAL.—Under the carbon se-  
15                 questration program, the implementing panel  
16                 shall accept a contract offer from an eligible  
17                 taxpayer only if—

18                         “(i) such taxpayer submits to the  
19                         panel a needs assessment described in sub-  
20                         paragraph (B), and

21                         “(ii) the contract offer identifies the  
22                         benefits of carbon sequestration practices  
23                         of the sponsored project under criteria de-  
24                         veloped to evaluate such benefits under  
25                         paragraph (3) and under guidelines insti-

1           tuted to quantify such benefits under para-  
2           graph (4).

3           “(B) NEEDS ASSESSMENT.—A needs as-  
4           sessment described in this subparagraph is an  
5           assessment of the need for the carbon seques-  
6           tration project sponsored by the eligible tax-  
7           payer in the contract offer and the ability of the  
8           eligible taxpayer to carry out the carbon seques-  
9           tration practices related to such project. The  
10          assessment shall be developed by the eligible  
11          taxpayer, in cooperation with the Agency for  
12          International Development, nongovernmental  
13          organizations, and independent third-party  
14          verifiers.

15          “(3) CRITERIA FOR EVALUATING BENEFITS OF  
16          CARBON SEQUESTRATION PRACTICES.—

17                 “(A) IN GENERAL.—The Chief of the For-  
18                 est Service, in consultation with other members  
19                 of the implementing panel, shall develop criteria  
20                 for prioritizing, determining the acceptability  
21                 of, and evaluating, the benefits of the carbon  
22                 sequestration practices proposed in projects  
23                 sponsored by eligible taxpayers which will in-  
24                 crease the sequestration of carbon for the pur-

1 poses of determining the acceptability of con-  
2 tract offers made by eligible taxpayers.

3 “(B) CONTENT.—The criteria shall ensure  
4 that credits under this section should not be al-  
5 located to projects whose primary purpose is to  
6 grow timber for commercial harvest or to  
7 projects which replace native ecological systems  
8 with commercial timber plantations. Projects  
9 should be prioritized according to—

10 “(i) native forest preservation, espe-  
11 cially with respect to land which would oth-  
12 erwise cease to be native forest land,

13 “(ii) reforestation of former forest  
14 land where such land has not been forested  
15 for at least 10 years,

16 “(iii) biodiversity enhancement,

17 “(iv) the prevention of greenhouse gas  
18 emissions through the preservation of car-  
19 bon storing plants and trees,

20 “(v) soil erosion management,

21 “(vi) soil fertility restoration, and

22 “(vii) the duration of the project, in-  
23 cluding any project under which other enti-  
24 ties are engaged to extend the duration of

1                   the project beyond the minimum carbon se-  
2                   questration project contract term.

3                   “(4) GUIDELINES FOR QUANTIFYING BENE-  
4                   FITS.—

5                   “(A) IN GENERAL.—The Chief of the For-  
6                   est Service, in consultation with other members  
7                   of the implementing panel, shall institute guide-  
8                   lines for the development of methodologies for  
9                   quantifying the amount of carbon sequestered  
10                  by particular projects for the purposes of deter-  
11                  mining the acceptability of projects sponsored  
12                  by eligible taxpayers. These guidelines should  
13                  set standards for eligible taxpayers with regard  
14                  to—

15                  “(i) methodologies for measuring the  
16                  carbon sequestered,

17                  “(ii) measures to assure the duration  
18                  of projects sponsored,

19                  “(iii) criteria that verifies that the  
20                  carbon sequestered is additional to the se-  
21                  questration which would have occurred  
22                  without the sponsored project,

23                  “(iv) reasonable criteria to evaluate  
24                  the extent to which the project displaces

1 activity that causes deforestation in an-  
2 other location, and

3 “(v) the extent to which the project  
4 promotes sustainable development in a  
5 project area, particularly with regard to  
6 protecting the traditional land tenure of in-  
7 digenous people.

8 “(B) BASIS.—In developing the guidelines,  
9 the Chief of the Forest Service shall—

10 “(i) consult with land grant univer-  
11 sities and entities which specialize in car-  
12 bon storage verification and measurement,  
13 and

14 “(ii) use information reported to the  
15 Secretary of Energy from projects carried  
16 out under the voluntary reporting program  
17 of the Energy Information Administration  
18 under section 1605 of the Energy Policy  
19 Act of 1992 (42 U.S.C. 13385).

20 “(5) REPORTING.—The Administrator of the  
21 Energy Information Administration, in consultation  
22 with the Secretary of Agriculture, shall develop  
23 forms to monitor carbon sequestration improvements  
24 made as a result of the program established under

1       this section and the implementing panel shall use  
2       such forms to report to the Administrator on—

3               “(A) carbon sequestration improvements  
4               made as a result of the program,

5               “(B) carbon sequestration practices of eli-  
6               gible taxpayers enrolled in the program, and

7               “(C) compliance with contracts entered  
8               into under this section.

9       “(e) ELIGIBLE TAXPAYER; IMPLEMENTING  
10   PANEL.—For purposes of this section—

11               “(1) ELIGIBLE TAXPAYER.—A taxpayer is eligi-  
12       ble for the credit under this section with respect to  
13       a carbon sequestration project contract if such tax-  
14       payer has not elected the application of sections 201  
15       and 202 of the International Carbon Sequestration  
16       Incentive Act with respect to such contract.

17               “(2) IMPLEMENTING PANEL.—There is estab-  
18       lished an implementing panel consisting of—

19               “(A) the Secretary of Agriculture,

20               “(B) the Secretary of State,

21               “(C) the Secretary of Energy,

22               “(D) the Chief of the Forest Service, and

23               “(E) representatives of nongovernmental  
24       organizations who have an expertise and experi-

1           ence in carbon sequestration practices, ap-  
2           pointed by the Secretary of Agriculture.

3       The Chief of the Forest Service shall act as chair-  
4       person of the implementing panel.

5       “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

6           “(1) IN GENERAL.—If, at any time during the  
7       carbon sequestration project contract period, there is  
8       a recapture event with respect to the investment  
9       under the contract, then the tax imposed by this  
10      chapter for the taxable year in which such event oc-  
11      curs shall be increased by the credit recapture  
12      amount.

13           “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
14      poses of paragraph (1), the credit recapture amount  
15      is an amount equal to the sum of—

16           “(A) the aggregate decrease in the credits  
17      allowed to the taxpayer under section 38 for all  
18      prior taxable years which would have resulted if  
19      no credit had been determined under this sec-  
20      tion with respect to such investment, plus

21           “(B) interest at the overpayment rate es-  
22      tablished under section 6621 on the amount de-  
23      termined under subparagraph (A) for each  
24      prior taxable year for the period beginning on

1           the due date for filing the return for the prior  
2           taxable year involved.

3       No deduction shall be allowed under this chapter for  
4       interest described in subparagraph (B).

5           “(3) RECAPTURE EVENT.—For purposes of  
6       paragraph (1), there is a recapture event with re-  
7       spect to an investment under the contract if—

8           “(A) the eligible taxpayer violates a term  
9           or condition of the contract with the imple-  
10          menting panel at any time,

11          “(B) the eligible taxpayer transfers the  
12          right and interest of the taxpayer in the carbon  
13          sequestration practices of the sponsored project,  
14          unless—

15               “(i) the transferee agrees with the im-  
16               plementing panel to assume all obligations  
17               of the contract, or

18               “(ii) the transferee and the imple-  
19               menting panel enter into a new carbon se-  
20               questration project contract,

21          “(C) the eligible taxpayer adopts a practice  
22          specified by the implementing panel in the con-  
23          tract as a practice which would tend to defeat  
24          the purposes of the carbon sequestration pro-  
25          gram, or

1           “(D) the contract is terminated under sub-  
2           section (c)(5).

3           “(4) SPECIAL RULES.—

4           “(A) TAX BENEFIT RULE.—The tax for  
5           the taxable year shall be increased under para-  
6           graph (1) only with respect to credits allowed  
7           by reason of this section which were used to re-  
8           duce tax liability. In the case of credits not so  
9           used to reduce tax liability, the carryforwards  
10          and carrybacks under section 39 shall be appro-  
11          priately adjusted.

12          “(B) NO CREDITS AGAINST TAX.—Any in-  
13          crease in tax under this subsection shall not be  
14          treated as a tax imposed by this chapter for  
15          purposes of determining the amount of any  
16          credit under this chapter or for purposes of sec-  
17          tion 55.

18          “(g) BASIS REDUCTION.—The basis of any invest-  
19          ment under a carbon sequestration project contract shall  
20          be reduced by the amount of any credit determined under  
21          this section with respect to such investment.

22          “(h) REGULATIONS.—The Secretary shall prescribe  
23          such regulations as may be appropriate to carry out this  
24          section, including regulations—

1           “(1) which limit the credit for investments  
2           which are directly or indirectly subsidized by other  
3           Federal benefits,

4           “(2) which prevent the abuse of the provisions  
5           of this section through the use of related parties,  
6           and

7           “(3) which impose appropriate reporting re-  
8           quirements.”.

9           (b) CREDIT MADE PART OF GENERAL BUSINESS  
10          CREDIT.—

11           (1) IN GENERAL.—Subsection (b) of section 38  
12           of the Internal Revenue Code of 1986 is amended by  
13           striking “plus” at the end of paragraph (12), by  
14           striking the period at the end of paragraph (13) and  
15           inserting “, plus”, and by adding at the end the fol-  
16           lowing new paragraph:

17           “(14) the carbon sequestration investment cred-  
18           it determined under section 45D(a).”

19           (2) LIMITATION ON CARRYBACK.—Subsection  
20           (d) of section 39 of such Code is amended by adding  
21           at the end the following new paragraph:

22           “(10) NO CARRYBACK OF CARBON SEQUESTRA-  
23           TION INVESTMENT CREDIT BEFORE JANUARY 1,  
24           2001.—No portion of the unused business credit for  
25           any taxable year which is attributable to the credit

1 under section 45D may be carried back to a taxable  
2 year ending before January 1, 2001.”

3 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection  
4 (c) of section 196 of the Internal Revenue Code of 1986  
5 is amended by striking “and” at the end of paragraph (7),  
6 by striking the period at the end of paragraph (8) and  
7 inserting “, and”, and by adding at the end the following  
8 new paragraph:

9 “(9) the carbon sequestration investment credit  
10 determined under section 45D(a).”

11 (d) CLERICAL AMENDMENT.—The table of sections  
12 for subpart D of part IV of subchapter A of chapter 1  
13 of the Internal Revenue Code of 1986 is amended by add-  
14 ing at the end the following new item:

“Sec. 45D. Carbon sequestration investment credit.”

15 (e) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to investments made after Decem-  
17 ber 31, 2000.

## 18 **TITLE II—LOAN GUARANTEES** 19 **AND EQUITY INVESTMENT IN-** 20 **SURANCE**

### 21 **SEC. 201. EXPORT-IMPORT BANK FINANCING.**

22 An owner or operator of property that is located out-  
23 side of the United States may enter into a carbon seques-  
24 tration project contract under the terms and conditions  
25 established under section 45D of the Internal Revenue

1 Code of 1986 to be eligible for an extension of credit from  
2 the Export-Import Bank of the United States of up to  
3 75 percent of the cost of carrying out the carbon seques-  
4 tration practices specified in the contract to the extent  
5 that the Export-Import Bank determines that the cost  
6 sharing is appropriate, in the public interest, and other-  
7 wise meets the requirements of the Export-Import Bank  
8 Act of 1945.

9 **SEC. 202. EQUITY INVESTMENT INSURANCE.**

10 An owner or operator of property that is located out-  
11 side of the United States may enter into a carbon seques-  
12 tration project contract under the terms and conditions  
13 established under section 45D of the Internal Revenue  
14 Code of 1986 to be eligible for investment insurance issued  
15 by the Overseas Private Investment Corporation pursuant  
16 to section 234 of the Foreign Assistance Act of 1961 (22  
17 U.S.C. 2194) if the Corporation determines that issuance  
18 of the insurance is consistent with the provisions of such  
19 section 234.